

Calendar No. 104

105TH CONGRESS
1ST Session

S. 621

[Report No. 105-41]

A BILL

To repeal the Public Utility Holding Company Act of 1935, to enact the Public Utility Holding Company Act of 1997, and for other purposes.

JUNE 27, 1997

Reported with amendments

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To repeal the Public Utility Holding Company Act of 1935, to enact the Public Utility Holding Company Act of 1997, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 22, 1997

Mr. D'AMATO (for himself, Mr. MURKOWSKI, Mr. DODD, Mr. SARBANES, Mr. GRAMM, Mr. SHELBY, Mr. MACK, Mr. FAIRCLOTH, Mr. ALLARD, Mr. LOTT, Mr. DOMENICI, Mr. AKAKA, Mr. INOUE, Mr. COATS, Mr. COCHRAN, Mr. ROBERTS, Mr. BROWNBACK, Mr. COVERDELL, Mr. SPECTER, Mr. NICKLES, Mr. ENZI, and Mr. BENNETT) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

JUNE 27, 1997

Reported by Mr. D'Amato, with amendments

[Omit the part struck through and insert the part printed in *italic*]

A BILL

To repeal the Public Utility Holding Company Act of 1935,
to enact the Public Utility Holding Company Act of
1997, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Public Utility Holding
3 Company Act of 1997”.

4 **SEC. 2. FINDINGS AND PURPOSES.**

5 (a) FINDINGS.—The Congress finds that—

6 (1) the Public Utility Holding Company Act of
7 1935 was intended to facilitate the work of Federal
8 and State regulators by placing certain constraints
9 on the activities of holding company systems;

10 (2) developments since 1935, including changes
11 in other regulation and in the electric and gas indus-
12 tries, have called into question the continued rel-
13 evance of the model of regulation established by that
14 Act;

15 (3) there is a continuing need for ~~limited Fed-~~
16 ~~eral and~~ State regulation in order to ensure the rate
17 protection of utility customers; and

18 (4) limited Federal regulation is necessary to
19 supplement the work of State commissions for the
20 continued rate protection of electric and gas utility
21 customers.

22 (b) PURPOSES.—The purposes of this Act are—

23 (1) to eliminate unnecessary regulation, yet
24 continue to provide for consumer protection by facili-
25 tating existing rate regulatory authority through im-
26 proved Federal and State commission access to

1 books and records of all companies in a holding com-
 2 pany system, to the extent that such information is
 3 relevant to rates paid by utility customers, while af-
 4 fording companies the flexibility required to compete
 5 in the energy markets; and

6 (2) to address protection of electric and gas
 7 utility customers by providing for Federal and State
 8 access to books and records of all companies in a
 9 holding company system that are relevant to utility
 10 rates.

11 **SEC. 3. DEFINITIONS.**

12 For purposes of this Act—

13 (1) the term “affiliate” of a company means
 14 any company 5 percent or more of the outstanding
 15 voting securities of which are owned, controlled, or
 16 held with power to vote, directly or indirectly, by
 17 such company;

18 (2) the term “associate company” of a company
 19 means any company in the same holding company
 20 system with such company;

21 (3) the term “Commission” means the Federal
 22 Energy Regulatory Commission;

23 (4) the term “company” means a corporation,
 24 partnership, association, joint stock company, busi-
 25 ness trust, or any organized group of persons,

1 whether incorporated or not, or a receiver, trustee,
2 or other liquidating agent of any of the foregoing;

3 (5) the term “electric utility company” means
4 any company that owns or operates facilities used
5 for the generation, transmission, or distribution of
6 electric energy for sale;

7 (6) the terms “exempt wholesale generator”
8 and “foreign utility company” have the same mean-
9 ings as in sections 32 and 33, respectively, of the
10 Public Utility Holding Company Act of 1935, as
11 those sections existed on the day before the effective
12 date of this Act;

13 (7) the term “gas utility company” means any
14 company that owns or operates facilities used for
15 distribution at retail (other than the distribution
16 only in enclosed portable containers or distribution
17 to tenants or employees of the company operating
18 such facilities for their own use and not for resale)
19 of natural or manufactured gas for heat, light, or
20 power;

21 (8) the term “holding company” means—

22 (A) any company that directly or indirectly
23 owns, controls, or holds, with power to vote, 10
24 percent or more of the outstanding voting secu-

1 rities of a public utility company or of a holding
2 company of any public utility company; and

3 (B) any person, determined by the Com-
4 mission, after notice and opportunity for hear-
5 ing, to exercise directly or indirectly (either
6 alone or pursuant to an arrangement or under-
7 standing with one or more persons) such a con-
8 trolling influence over the management or poli-
9 cies of any public utility company or holding
10 company as to make it necessary or appropriate
11 for the rate protection of utility customers with
12 respect to rates that such person be subject to
13 the obligations, duties, and liabilities imposed
14 by this Act upon holding companies;

15 (9) the term “holding company system” means
16 a holding company, together with its subsidiary
17 companies;

18 (10) the term “jurisdictional rates” means
19 rates established by the Commission for the trans-
20 mission of electric energy in interstate commerce,
21 the sale of electric energy at wholesale in interstate
22 commerce, the transportation of natural gas in inter-
23 state commerce, and the sale in interstate commerce
24 of natural gas for resale for ultimate public con-

1 sumption for domestic, commercial, industrial, or
2 any other use;

3 (11) the term “natural gas company” means a
4 person engaged in the transportation of natural gas
5 in interstate commerce or the sale of such gas in
6 interstate commerce for resale;

7 (12) the term “person” means an individual or
8 company;

9 (13) the term “public utility” means any person
10 who owns or operates facilities used for transmission
11 of electric energy in interstate commerce or sales of
12 electric energy at wholesale in interstate commerce;

13 (14) the term “public utility company” means
14 an electric utility company or a gas utility company;

15 (15) the term “State commission” means any
16 commission, board, agency, or officer, by whatever
17 name designated, of a State, municipality, or other
18 political subdivision of a State that, under the laws
19 of such State, has jurisdiction to regulate public util-
20 ity companies;

21 (16) the term “subsidiary company” of a hold-
22 ing company means—

23 (A) any company, 10 percent or more of
24 the outstanding voting securities of which are
25 directly or indirectly owned, controlled, or held

1 with power to vote, by such holding company;
 2 and

3 (B) any person, the management or poli-
 4 cies of which the Commission, after notice and
 5 opportunity for hearing, determines to be sub-
 6 ject to a controlling influence, directly or indi-
 7 rectly, by such holding company (either alone or
 8 pursuant to an arrangement or understanding
 9 with one or more other persons) so as to make
 10 it necessary for the rate protection of utility
 11 customers with respect to rates that such per-
 12 son be subject to the obligations, duties, and li-
 13 abilities imposed by this Act upon subsidiary
 14 companies of holding companies; and

15 (17) the term “voting security” means any se-
 16 curity presently entitling the owner or holder thereof
 17 to vote in the direction or management of the affairs
 18 of a company.

19 **SEC. 4. REPEAL OF THE PUBLIC UTILITY HOLDING COM-**
 20 **PANY ACT OF 1935.**

21 The Public Utility Holding Company Act of 1935 (15
 22 U.S.C. 79a et seq.) is repealed, effective 18 months after
 23 the date of enactment of this Act.

1 **SEC. 5. FEDERAL ACCESS TO BOOKS AND RECORDS.**

2 (a) IN GENERAL.—Each holding company and each
3 associate company thereof shall maintain, and shall make
4 available to the Commission, such books, accounts, memo-
5 randa, and other records as the Commission deems to be
6 relevant to costs incurred by a public utility or natural
7 gas company that is an associate company of such holding
8 company and necessary or appropriate for the protection
9 of utility customers with respect to jurisdictional rates for
10 the transmission of electric energy in interstate commerce,
11 the sale of electric energy at wholesale in interstate com-
12 merce, the transportation of natural gas in interstate com-
13 merce, and the sale in interstate commerce of natural gas
14 for resale for ultimate public consumption for domestic,
15 commercial, industrial, or any other use.

16 (b) AFFILIATE COMPANIES.—Each affiliate of a hold-
17 ing company or of any subsidiary company of a holding
18 company shall maintain, and make available to the Com-
19 mission, such books, accounts, memoranda, and other
20 records with respect to any transaction with another affili-
21 ate, as the Commission deems to be relevant to costs in-
22 curred by a public utility or natural gas company that is
23 an associate company of such holding company and nec-
24 essary or appropriate for the protection of utility cus-
25 tomers with respect to jurisdictional rates.

1 (c) HOLDING COMPANY SYSTEMS.—The Commission
 2 may examine the books, accounts, memoranda, and other
 3 records of any company in a holding company system, or
 4 any affiliate thereof, as the Commission deems to be rel-
 5 evant to costs incurred by a public utility or natural gas
 6 company within such holding company system and nec-
 7 essary or appropriate for the protection of utility cus-
 8 tomers with respect to jurisdictional rates.

9 (d) CONFIDENTIALITY.—No member, officer, or em-
 10 ployee of the Commission shall divulge any fact or infor-
 11 mation that may come to his or her knowledge during the
 12 course of examination of books, accounts, memoranda, or
 13 other records as provided in this section, except as may
 14 be directed by the Commission or by a court of competent
 15 jurisdiction.

16 **SEC. 6. STATE ACCESS TO BOOKS AND RECORDS.**

17 (a) IN GENERAL.—Upon the written request of a
 18 State commission having jurisdiction to regulate a public
 19 utility company in a holding company system, ~~and subject~~
 20 ~~to such terms and conditions as may be necessary and ap-~~
 21 ~~propriate to safeguard against unwarranted disclosure to~~
 22 ~~the public of any trade secrets or sensitive commercial in-~~
 23 ~~formation, a~~ *the* holding company or ~~its~~ *any* associate com-
 24 pany or affiliate thereof, *other than such public utility*

1 *company*, wherever located, shall produce for inspection
 2 books, accounts, memoranda, and other records that—

3 (1) have been identified in reasonable detail in
 4 a proceeding before the State commission;

5 (2) the State commission deems are relevant to
 6 costs incurred by such public utility company; and

7 (3) are necessary for the effective discharge of
 8 the responsibilities of the State commission with re-
 9 spect to such proceeding.

10 *(b) LIMITATION.—Subsection (a) does not apply to*
 11 *any person that is a holding company solely by reason of*
 12 *ownership of one or more qualifying facilities under the*
 13 *Public Utility Regulatory Policies Act.*

14 *(c) CONFIDENTIALITY OF INFORMATION.—The produc-*
 15 *tion of books, accounts, memoranda, and other records*
 16 *under subsection (a) shall be subject to such terms and con-*
 17 *ditions as may be necessary and appropriate to safeguard*
 18 *against unwarranted disclosure to the public of any trade*
 19 *secrets or sensitive commercial information.*

20 ~~(b)~~ *(d) EFFECT ON STATE LAW.—Nothing in this*
 21 *section shall preempt applicable State law concerning the*
 22 *provision of books, records, or any other information, or*
 23 *in any way limit the rights of any State to obtain books,*
 24 *records, or any other information under any other Federal*
 25 *law, contract, or otherwise.*

1 ~~(e)~~ (e) COURT JURISDICTION.—Any United States
 2 district court located in the State in which the State com-
 3 mission referred to in subsection (a) is located shall have
 4 jurisdiction to enforce compliance with this section.

5 **SEC. 7. EXEMPTION AUTHORITY.**

6 (a) RULEMAKING.—Not later than 90 days after the
 7 *effective date of enactment* of this Act, the Commission
 8 shall promulgate a final rule to exempt from the require-
 9 ments of section 5 any person that is a holding company,
 10 solely with respect to one or more—

11 (1) qualifying facilities under the Public Utility
 12 Regulatory Policies Act of 1978;

13 (2) exempt wholesale generators; or

14 (3) foreign utility companies.

15 (b) OTHER AUTHORITY.—If, upon application or
 16 upon its own motion, the Commission finds that the books,
 17 records, accounts, memoranda, and other records of any
 18 person are not relevant to the jurisdictional rates of a pub-
 19 lic utility *or natural gas* company, or if the Commission
 20 finds that any class of transactions is not relevant to the
 21 jurisdictional rates of a public utility *or natural gas* com-
 22 pany, the Commission shall exempt such person or trans-
 23 action from the requirements of section 5.

1 **SEC. 8. AFFILIATE TRANSACTIONS.**

2 Nothing in this Act shall preclude the Commission
3 or a State commission from exercising its jurisdiction
4 under otherwise applicable law to determine whether a
5 public utility company, *public utility, or natural gas com-*
6 *pany* may recover in rates any costs of an activity per-
7 formed by an associate company, or any costs of goods
8 or services acquired by such public utility company from
9 an associate company.

10 **SEC. 9. APPLICABILITY.**

11 No provision of this Act shall apply to, or be deemed
12 to include—

13 (1) the United States;

14 (2) a State or any political subdivision of a
15 State;

16 (3) any foreign governmental authority not op-
17 erating in the United States;

18 (4) any agency, authority, or instrumentality of
19 any entity referred to in paragraph (1), (2), or (3);
20 or

21 (5) any officer, agent, or employee of any entity
22 referred to in paragraph (1), (2), or (3) acting as
23 such in the course of his or her official duty.

1 **SEC. 10. EFFECT ON OTHER REGULATIONS.**

2 Nothing in this Act precludes the Commission or a
3 State commission from exercising its jurisdiction under
4 otherwise applicable law to protect utility customers.

5 **SEC. 11. ENFORCEMENT.**

6 The Commission shall have the same powers as set
7 forth in sections 306 through 317 of the Federal Power
8 Act (16 U.S.C. 825d–825p) to enforce the provisions of
9 this Act.

10 **SEC. 12. SAVINGS PROVISIONS.**

11 (a) IN GENERAL.—Nothing in this Act prohibits a
12 person from engaging in or continuing to engage in activi-
13 ties or transactions in which it is legally engaged or au-
14 thorized to engage on the effective date of this Act, ~~if that~~
15 ~~person continues to comply with the terms of any such~~
16 ~~authorization, whether by rule or by order.~~

17 (b) EFFECT ON OTHER COMMISSION AUTHORITY.—
18 Nothing in this Act limits the authority of the Commission
19 under the Federal Power Act (16 U.S.C. 791a et seq.)
20 (including section 301 of that Act) or the Natural Gas
21 Act (15 U.S.C. 717 et seq.) (including section 8 of that
22 Act).

23 **SEC. 13. IMPLEMENTATION.**

24 Not later than 18 months after the date of enactment
25 of this Act, the Commission shall—

1 (1) promulgate such regulations as may be nec-
2 essary or appropriate to implement this Act (*other*
3 *than section 6*); and

4 (2) submit to the Congress detailed rec-
5 ommendations on technical and conforming amend-
6 ments to Federal law necessary to carry out this Act
7 and the amendments made by this Act.

8 **SEC. 14. TRANSFER OF RESOURCES.**

9 All books and records that relate primarily to the
10 functions transferred to the Commission under this Act
11 shall be transferred from the Securities and Exchange
12 Commission to the Commission.

13 **SEC. 15. EFFECTIVE DATE.**

14 This Act shall take effect 18 months after the date
15 of enactment of this Act.

16 **SEC. 16. AUTHORIZATION OF APPROPRIATIONS.**

17 There are authorized to be appropriated such funds
18 as may be necessary to carry out this Act.

19 **SEC. 17. CONFORMING AMENDMENT TO THE FEDERAL**
20 **POWER ACT.**

21 Section 318 of the Federal Power Act (16 U.S.C.
22 825q) is repealed.